

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

DALE DRISCOLL,

Petitioner,

vs.

WARDEN, Lebanon Correctional  
Institution,

Respondent.

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Case No. 3:10cv0336

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF THE UNITED STATES MAGISTRATE JUDGE (DOC. #11), AND  
OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC.#13);  
JUDGMENT ENTERED IN FAVOR OF RESPONDENT AND AGAINST  
PETITIONER HEREIN, DISMISSING PETITION FOR WRIT OF HABEAS  
CORPUS AS PROCEDURALLY DEFAULTED AND UPON THE MERITS;  
CERTIFICATE OF APPEALABILITY AND ANTICIPATED REQUEST TO  
APPEAL IN FORMA PAUPERIS DENIED; TERMINATION ENTRY

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On October 27, 2011, the United States Magistrate Judge filed a Report and Recommendations (Doc. #11), recommending that the Petition for Writ of Habeas Corpus be dismissed as procedurally defaulted and upon consideration of the merits, and that Petitioner be denied a certificate of appealability and an anticipated request for leave to appeal in forma pauperis.

Pursuant to the reasoning and citations of authority set forth in the Magistrate Judge's Report and Recommendations (Doc.#11), as well as upon a thorough de

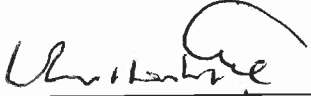
novo review of this Court's file and the applicable law, this Court adopts the aforesaid Report and Recommendations in their entirety, and overrules Petitioner's objections thereto (Doc.#13).

Judgment will be ordered entered in favor of Respondent and against Petitioner herein, dismissing the Petitioner's petition for writ of habeas corpus as procedurally defaulted and upon its merits.

Given that Petitioner has failed to make a substantial showing of the denial of a federal constitutional right and that this Court's decision rendered herein would not be debatable among jurists of reason, this Court denies Petitioner a certificate of appealability. Further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies an anticipated request to appeal in forma pauperis.

The captioned cause is ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 28, 2012

  
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WALTER HERBERT RICE, JUDGE  
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record